



**Supporting Attendance Toolkit SA07:
Appeals Process
(Version: 1.0)**



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Version Number	Effective Date	Details of Last Revision
1.0	21 June 2021	

Capability Dismissal – Appeal Process

Introduction

Under the Supporting Attendance Policy there is no right of appeal until such times that an employee is terminated on the grounds of capability due to unsustainable levels of attendance, and/or ill health. An employee who is dismissed from their employment with the Council on these grounds has 2 rights of appeal, one at service level, and one to the relevant committee.

Where an employee considers the process has not been applied correctly, they can raise this under the Councils' Grievance procedure.

There is a separate appeal process for employees that wish to appeal the decision not to grant them ill health retirement or only award them Tier 2 Ill Health. Further information can be found in the Supporting Attendance Toolkit SA 09 – Ill Health Retirement.

Section 1: Stage 1 - Service Level Appeal

- Where an employee is dismissed from the employment of the Council on the grounds of capability/ill health the first right of appeal is at Service level.
- The employee, or their representative must submit the appeal in writing to the relevant Head of the Service within 14 calendar days of the date they are notified of the decision to dismiss.
- The employee, or their representative must state the grounds on which the appeal is based.
- Once an appeal is received the Head of Service will nominate an appropriate Manager to hear the appeal and notify Employee Relations.
- The nominated manager must then contact Employee Relations who will support them in arranging the appeal hearing and provide support and advice on the day, in order to ensure due process is followed.
- The appeal hearing should be arranged without any unreasonable delays and the employee notified in writing (see SA 07(a) – Invite to Stage 1 Appeal Hearing) of the date of the appeal hearing and who will be in attendance i.e. dismissing officer or Service representative and Employee Relations Advisor, who will act in an advisory capacity at the hearing.
- Employee have the right to be accompanied at the hearing, see Section 2.8 of the Supporting Attendance Policy on who their companion/s can be.

Section 2: Conducting the Appeal Hearing

A capability appeal hearing should follow the same fair and reasonable process as a disciplinary appeal in that the employee should submit grounds for their appeal, be given the opportunity to present and sum up their case, be allowed to ask questions of the dismissing officer (if present) and appeals officer, and be entitled to appropriate representation.

The following format for the appeal hearing is recommended;

1. Introduction
 - Who is present?
 - State the purpose of the hearing – i.e. to consider the grounds of the appeal against the termination of employment on the grounds of capability and determine whether the decision was fair and reasonable in the circumstances
2. Service Representative or ER invited to summarise the background to case and the reason for reaching the decision.
3. Employee/ representative and chairperson has opportunity to ask questions of Service Representative and/or ER
4. Employee/representative to give grounds for appeal submitting any additional evidence/facts
5. Appeals officer has opportunity to ask questions of employee/representative
6. Employee/Representative to sum up grounds for appeal
7. Hearing adjourned by Appeals officer to consider case
8. After hearing all the evidence and before making a decision consideration should be given to the following:
 - action taken in similar cases in the past
 - any mitigating circumstances
 - whether the action taken was reasonable and in accordance with policy/procedure, legislation and good practice
9. Reconvene appeal hearing and confirm to the employee
 - Unable to make decision on the day – will confirm decision in writing or re-convene hearing within reasonable timescale
 - Upheld – explain what happens next e.g. arrangements for return
 - Partially upheld – reasons for this and what it means
 - Rejected – reasons for and confirm will be put in writing

The decision must be confirmed in writing (SA 07(b) – Outcome of Capability Appeal Hearing) within 7 calendar days of the hearing or re-convened hearing, unless more time is required to obtain/clarify information and therefore the employee should be advised that there will be a delay in providing the outcome, albeit this must be provided within a reasonable timescale e.g. without any unnecessary delays.

Section 3: Stage 2 - Committee Level Appeal

If following the service level appeal, the employee remains dis-satisfied with the outcome they have a further right of appeal to the Employee Appeals Sub-Committee. The grounds for a Stage 2 appeal must be submitted in writing to the Head of People and Organisational Development within 14 days of receipt of date they are notified of the Stage 1 decision.

The Head of People & Organisational Development will then liaise with Committee services and the relevant Head of Service to make arrangements for the appeal to be heard and the employee will be notified of the arrangements in writing.